

## **Chapter V. Administration and Shoreline Permit Procedures**

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### **20.35.001 Purpose and Applicability**

The purpose of this chapter is to establish a program for the administration and enforcement of the permit system for shoreline management provided by the Shoreline Management Act of 1971 (RCW Chapter 90.58). This chapter applies to all development within shorelines of the state within the City of Burien's shoreline jurisdiction. The City's shoreline administrative procedures are intended to be consistent with all provisions, criteria, application requirements, public notice requirements, and local or state review procedures set forth in WAC 173-27, Shoreline Management Permit and Enforcement Procedures. In the event of any inconsistencies between this Shoreline Master Program and WAC 173-27, the WAC shall govern.

All development in designated shoreline areas shall comply with the policy, provisions, and intent of the City of Burien Shoreline Master Program. Definitions contained in the Shoreline Management Act of 1971 (RCW Chapter 90.58) and the Shoreline Master Program Guidelines (WAC Chapter 173-26) shall apply to all terms and concepts used in this chapter, provided that definitions contained in this title shall be applicable where not in conflict with the Shoreline Management Act and the Shoreline Master Program Guidelines. In addition, the City will establish minimum application requirements, checklists, handouts, forms and fees for shoreline permits and shoreline exemption determinations.

Amendments to the City of Burien Shoreline Master Program will not become effective until approval by the Washington State Department of Ecology pursuant to RCW 90.58.090.

### **20.35.005 Authority and Rule of Liberal Construction**

This chapter is promulgated pursuant to the authority and mandate of RCW 90.58.140(3). Compliance with this chapter shall constitute compliance with the Shoreline Management Act, the Shoreline Master Program Guidelines, and the City of Burien Shoreline Master Program (SMP) for evaluating permits on shorelines of the state.

As provided under RCW 90.58.900, the Shoreline Management Act (SMA) is exempted from the rule of strict construction. The SMA and the City of Burien Shoreline Master Program shall, therefore, be liberally construed to give full effect to the purposes, goals, policies, and standards for which the SMA and this Master Program were enacted. Exemptions from the Act or this Master Program are to be narrowly construed.

## **20.35.010 Shoreline Permit Types and Review Procedures**

1. **Non-Exempt Activities.** All non-exempt substantial use and development undertaken on the City of Burien's shoreline jurisdiction must first obtain either a shoreline exemption, *Shoreline Substantial Development Permit*, *Shoreline Conditional Use Permit*, or *Shoreline Variance* from the City.
2. **Pre-application Meeting.** The owner of the subject property or the authorized agent of the owner is encouraged to have a pre-application meeting with the Shoreline Administrator to determine the appropriate type of shoreline permit needed for the proposed action.
3. **Consolidated Permit Review.** All shoreline permits shall be processed using the Type 1 land use decision process as set forth in BMC Chapter 19.65. If any shoreline use or development is subject to other approvals or permits under another permit authority, such as the zoning or subdivision codes, they shall be subject to a consolidated review and the decision maker designated for the approval or permit shall be the decision maker for the consolidated review.

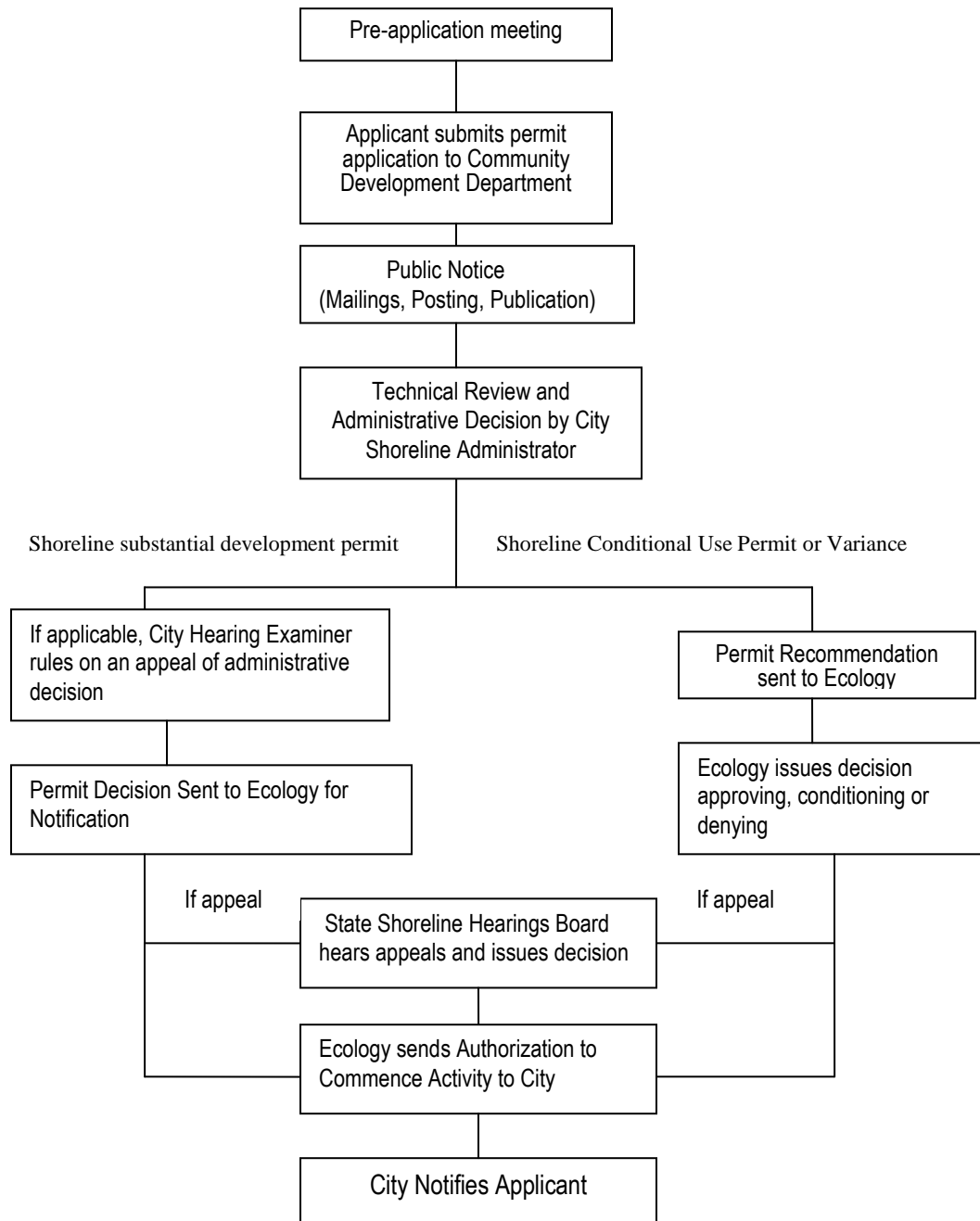
Issuance of a shoreline permit is typically processed as a Type 1 land use action as set forth in the City of Burien Municipal Code Chapter 19.65. A Type 1 land use decision is an administrative decision made by the Community Development Director following issuance of a public notice, consideration of written public comments and review of a written staff recommendation. The Director's decision can be appealed to the City's Hearing Examiner. Depending on the underlying land use permits, the shoreline permit maybe processed as a Type 2 or 3 process involving the Hearing Examiner or the City Council.

4. **Public Notice.** Public notice of an application for a shoreline permit shall be provided pursuant to BMC Chapter 19.65 unless otherwise specifically stated in this code. The public notice period shall extend thirty (30) days. If there is conflicting public notice time periods with State Law or Administrative Codes, the longer notice period shall be used.
5. **Department of Ecology Notification.** The Washington Department of Ecology-SEA Division (Ecology) shall be notified of the permit decision in the case of a shoreline permit or shoreline exemption involving a federal agency.
6. **Compliance with Regulations.** In the case of either a shoreline conditional use permit or a shoreline variance, the Shoreline Administrator shall determine the application's compliance with the relevant review criteria and prepare a recommendation that is then forwarded to Ecology for review and approval. The City's recommendation may include issuing the shoreline permit, issuing the shoreline permit with conditions, or denial of the requested shoreline permit.

7. **Shoreline Conditional Use Permit required.** A development activity or use that is listed as a conditional use pursuant to this master program or is an unclassified use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.
8. **Shoreline Variance Required.** When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a shoreline variance, consistent with WAC 173-27-170.

Figure 7 is a flow chart illustrating the shoreline permit review process for a type 1 shoreline permit.

**Figure 7 Shoreline Permit Review for Type 1 Process**



### **20.35.015 Shoreline Substantial Development Permits**

1. **Substantial Development Permit Required.** Prior to any shoreline substantial development within a shoreline of the state, a shoreline substantial development permit shall be obtained. A shoreline substantial development permit may be granted only when the development proposed is consistent with the Shoreline Management Act, the City of Burien Shoreline Master Program, the State Environmental Policy Act, and other applicable statutes, plans, regulations and policies. Development undertaken pursuant to the issuance of a permit shall be limited to that specifically delineated on the official site plan submitted by the applicant. The development shall be in compliance with any and all conditions imposed upon such permit at its issuance, including any impact mitigation measures identified in documents submitted in support of the application.
2. **Approval Criteria.** A substantial development permit shall be granted by the Shoreline Administrator only when the development proposed is consistent with the following;
  - A. City of Burien Comprehensive Plan, Burien Municipal Code, and Burien Shoreline Master Program; and
  - B. The proposed development or activity must also be found to be consistent with policies, guidelines, and regulations of the state Shoreline Management Act (RCW 90.58, WAC 173-26 and WAC 173-27).
3. **Authority to Condition.** The Shoreline Administrator may attach conditions to the approval of permits and shoreline exemptions as necessary to assure this consistency.

### **20.35.020 Substantial Development Permits for Limited Utility Extensions and Bulkheads**

1. **Procedures.** An application for a substantial development permit for a limited utility extension or for the construction of a new bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:
  - a. The public comment period shall be 20 days. The notice provision set forth in BMC 19.65.040 shall explain how the public may obtain a copy of the city's decision on the application no later than two days following its issuance consistent with BMC 19.65.055. If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

- b. For purposes of this section, a limited utility extension means the extension of a utility service that:
  1. Is categorically exempt under RCW Chapter 43.21C for one or more of the following: natural gas, electricity, telephone, water or sewer;
  2. Will serve an existing use in compliance with RCW Chapter 90.58; and
  3. Will not extend more than 2,500 linear feet within the shorelines of the state.

### **20.35.025 Exemptions from Shoreline Substantial Development Permits** (See WAC 173-27-040 for additional language and details)

1. **Rule of Narrow Construction.** There are several types of development activities that are exempt from the requirement to obtain a Shoreline Substantial Development Permit. State law requires that such exemptions be construed narrowly and if any part of the development is not eligible for exemption, then a Substantial Development Permit is required for the entire proposed development. No pre-application meeting is required for a shoreline exemption and the City usually makes a determination within thirty days. The Department of Ecology does not review shoreline exemptions unless State or Federal agency approvals are required for the project.
2. **Shoreline Exemption Process.** Exemption from the Shoreline Substantial Development Permit process does not constitute exemption from compliance with the policies and use regulations of the SMA (RCW 90.58); the provisions of this master program; or other applicable city, state or federal permit requirements. The Shoreline Administrator is authorized to grant or deny requests for exemptions from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in the Shoreline Permit Matrix (Figure 4) of this master program. Such requests shall be applied for on forms provided by the Shoreline Administrator. The request shall be in writing and shall indicate the specific exemption of this SMP that is being applied to the development. The Shoreline Administrator shall prepare an analysis of the consistency of the project with this SMP and the SMA. As appropriate, the Shoreline Administrator's analysis and decision shall include statements of exemption which may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the SMA and SMP. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Shoreline Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to BMC 19.65.
3. **Agency Approvals Required.** Even though a project is exempt from obtaining a substantial development permit, it may still need approvals from other agencies. If the proposal involves construction within navigable water or if the project includes dredging or placement of fill, a U.S. Army Corps of Engineers Section 10 and/or



404 permit is required. In addition, if the project involves construction or other activity waterward of the ordinary high water mark or if the project includes an activity that will use, divert, obstruct, or change the natural flow or bed of any state waters, a Hydraulic Project Approval from the Washington State Department of Fish and Wildlife is required.

4. **Exemptions.** The following developments or activities shall not require a local Shoreline Substantial Development Permit:
  - A. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred and eight dollars (\$5,718), if such development does not materially interfere with the normal public use of the water or shorelines of the state and does not result in a net loss of ecological functions. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.5 8.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
  - B. **Normal Maintenance and Repair.** Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including, but not limited to its size, shape, configuration, location and external appearance, except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment. The need for replacement resulting from neglect or maintenance and repair is not considered a common method of repair. Normal repair must occur within a reasonable period after decay or partial destruction. If decay or partial destruction occurs to an extent of fifty percent or greater of the replacement cost of the original development, repair or replacement must be addressed within one year. Restoration may include total replacement of buildings and structures when supported by a statement from the Building Official that complete replacement is common practice. Replacement of nonconforming buildings, structures, land and uses shall comply with the provisions of BMC Chapter 19.55 and the Burien SMP.
  - C. **Construction of a normal protective bulkhead common to single family residences.** A "normal protective" bulkhead is constructed at or near the ordinary high water mark to protect a single family residence and is for protecting land from erosion, not for the purpose of creating land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Bioengineered erosion control and alternative bank stabilization projects

may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Department of Fish and Wildlife. Backfill behind a constructed normal protective bulkhead is allowed, however no more than 1 cubic yard of fill per 1 horizontal foot of bulkhead wall may be used.

- D. **Emergency Construction.** Emergency construction necessary to protect property from damage by the elements. An *emergency* is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed, except where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation. Upon abatement of the emergency situation the new structure shall be removed or any permit be obtained which would have been required, absent an emergency, pursuant to RCW Chapter 90.58, or the Burien Shoreline Master Program.
- E. **Single Family Residence.** Construction on shorelands by an owner, lessee or contract purchaser of a single family residence for his/her own use or for the use of his/her family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the state agencies having jurisdiction and the City. "Single-family residence" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenances. An *appurtenance* is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Appurtenances typically include a garage, decks, driveway, utilities and fences. Construction of a single-family residence may include grading which does not exceed two hundred fifty (250) cubic yards, and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction authorized under this exemption shall be located landward of the ordinary high water mark.
- F. **Marking of Property Lines.** The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
- G. **Navigational Aids.** Construction or modification, by or under the authority of the Coast Guard, of navigational aids such as channel markers and anchor buoys.
- H. **State Certified Project.** Any project with a certification from the Governor pursuant to RCW Chapter 80.50.
- I. **Site Exploration and Investigation.** Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:
  - i. The activity does not interfere with the normal public use of the surface waters;

- ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
  - iii. The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to ensure that the site is restored to preexisting conditions;
  - v. The activity is not subject to the permit requirements of RCW 90.58.550 (oil or natural gas exploration in marine waters).
- J. Noxious Weeds.** The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or Ecology jointly with other state agencies under RCW Chapter 43.21 C.
- K. Watershed Restoration Projects.** The Shoreline Administrator shall review *watershed restoration projects* for consistency with the this master program in an expeditious manner and shall issue a decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee will be charged for accepting and processing requests for a shoreline exemption for watershed restoration projects as used in this section.
- L. Private or Public Restoration Projects.** A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
- i. The project has been approved in writing by the Washington State Department of Fish and Wildlife (WDFW) as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
  - ii. The project has received hydraulic project approval by WDFW pursuant to RCW Chapter 75-20; and
  - iii. The Shoreline Administrator has determined that the project is consistent with this master program.
- M. Hazardous Substance Remedial Actions.** The procedural requirements of RCW Chapter 90.58 shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to RCW Chapter 70.105D or to Ecology when it conducts a remedial action under RCW Chapter 70.105D. Ecology shall, in consultation with the City, assure that such projects comply with the substantive requirements of RCW Chapter 90.58, WAC Chapter 173-26 and this master program.

### **20.35.030 Letter of Exemption**

1. **Letter of Exemption, General.** Persons requesting an exemption must obtain a written letter of exemption verifying the proposed development as not subject to a Shoreline Substantial Development Permit. The letter of exemption must state how the proposed action is consistent with the policies and regulations of the City of Burien Shoreline Master Program. For example, the approval of a Building Permit for a single-family residence and bulkhead can be conditioned on the basis of shoreline policy and use regulations. The Building Official or other permit authorizing official, through consultation with the Shoreline Administrator, shall attach shoreline management terms and conditions to a building permit or other permit approvals pursuant to RCW 90.58.140.
2. **State and Federal Agencies.** Where shoreline development proposals are subject to review, approval, and permitting by a federal or state agency, the Shoreline Administrator shall prepare a letter and send to the Department of Ecology indicating the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the City's analysis of the consistency of the project with the City of Burien Shoreline Master Program and the state Shoreline Management Act.

### **20.35.035 Shoreline Conditional Use Permits (See also WAC 173-27-160)**

1. **Purpose.** The purpose of a shoreline conditional use permit is to allow greater flexibility in administering the use regulations of the Burien Shoreline Master Program in a manner consistent with the policies of the Shoreline Management Act. This allows for review of a proposed action which may have a potential for compatibility concerns with nearby uses or other impacts that could be resolved under special circumstances with appropriate mitigation measures or conditions of approval.
2. **Criteria.** Shoreline conditional uses identified in the Burien Shoreline Master Program Use Matrix or those that are unlisted uses but not prohibited uses, may be allowed only when the applicant can demonstrate all of the following:
  - a. The proposed use will be consistent with RCW 90.58.020 and the Shoreline Management Act and the Burien Shoreline Master Program;
  - b. The proposed use will not interfere with the normal public use of public shorelines;
  - c. The proposed use and development of the site and design of the project will be compatible with other permitted and planned uses within the area;
  - d. The shoreline proposal will not result in significant adverse impacts on the shoreline environment and that the cumulative impact of additional

requests for like actions in the area will remain consistent with the policies of the Shoreline Management Act and the Burien Shoreline Master Program.

- e. That the proposed use will not cause a substantial detrimental effect to the public interest. In authorizing a shoreline conditional use permit, special conditions may be attached to the permit to prevent undesirable effects of the proposed use, to ensure consistency with the Shoreline Management Act and the Burien Shoreline Master Program, or to address cumulative impacts of all like actions.

#### **20.35.040 Shoreline Variance Permits** (See also WAC 173-27-170)

1. **Applicability.** A shoreline variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that strict implementation of the policies, regulations or development standards would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020 or the Burien Shoreline Master Program. Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. The applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect. A variance permit cannot be granted for a use.
2. **Landward Variance Criteria.** Variance permits for development and/or uses that will be located landward of the ordinary high water mark and/or landward of a wetland may be authorized provided the applicant can demonstrate all of the following:
  - a. The strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
  - b. The hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
  - c. The design of the project is compatible with other authorized developments within the area and with uses planned for the area under the City's comprehensive plan and Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
  - d. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - e. The variance requested is the minimum necessary to afford relief; and
  - f. The public interest will suffer no substantial detrimental effect.

3. **Waterward Variance Criteria.** Variance permits for development and/or uses that will be located waterward of the ordinary high water mark or within a wetland, may be authorized provided the applicant can demonstrate all of the following:
  - a. The strict application of the bulk, dimensional or performance standards set forth in the Burien Shoreline Master Program precludes all reasonable use of the property;
  - b. The proposal is consistent with the criteria established (b) through (f) of section 2; and
  - c. The public rights of navigation and use of the shorelines will not be adversely affected.
4. **Consideration of Cumulative Impacts.** In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

#### **20.35.045 Alteration or Reconstruction of Nonconforming Structures or Uses**

1. **Nonconformance Defined.** A nonconforming use or structure means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Shoreline Management Act or the City of Burien's shoreline master program, or amendments thereto, but which does not conform to currently adopted regulations or standards.
2. **Limitations.** Uses and developments that were legally established and are nonconforming with regard to the use regulations of this master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single family may be modified consistent with this section of the City of Burien Shoreline Master Program.

Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, density, bulk, or height, may be maintained, repaired, enlarged or expanded provided that these actions do not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. Non-conforming single family residences may be expanded pursuant to 20.35.045 [5], all other expansions shall obtain a variance or be brought into conformance with the provisions this shoreline master program and the SMA.

3. **Voluntary Removal, Moving or Alterations.** Voluntary removal or alteration of a primary structure or appurtenance that exceeds 50% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll shall comply with the provisions of this City of Burien Shoreline Master Program. A nonconforming structure which is moved any distance must be brought into conformance with provisions of this shoreline master program and the SMA.
4. **Reconstruction.** A nonconforming structure which is destroyed, deteriorated, or damaged more than 75% of the assessed value of the *nonconforming structure* as established by the most current county assessor's tax roll at present or at the time of its destruction by fire, explosion, or other casualty or act of God, may be reconstructed only insofar as it is consistent with the following:
  - a. The structure must be located landward of the ordinary high water mark.
  - b. The area between the nonconforming structure and the OHWM shall meet the vegetation conservation standards of this Master Program.
  - c. The reconstruction shall not cause adverse impacts to shoreline ecological functions or processes.
  - d. The action shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the minimum side yard setback, or further into the riparian buffer than the existing structure. Encroachments that extend waterward or further into the riparian buffer, or the minimum required side yard setbacks require a variance.
  - e. An application is filed to reconstruct the structure within 18 months of the date of the damage.
5. **Expansion.** Enlargement or expansion of single family residences, within the riparian buffer or building setback, less than 500 square feet of building coverage may be approved by a shoreline substantial development permit subject to the criteria listed in this section. Enlargement or expansions of a single family residence greater than 500 square feet of building coverage by the addition of space to the primary structure or by the addition of normal appurtenances as defined in Section 20.40 that would increase the nonconformity and/or encroach further into areas where new structures or developments would not be allowed under this Master Program may be approved by a shoreline conditional use permit if all of the following criteria are met:
  - a. The structure must be located landward of the ordinary high water mark.

- b. The enlargement, expansion or addition to the existing primary residential structure shall not extend further waterward except through application of the common line setback provision of 20.30.100 [2.c]. Expansions shall not extend further into the minimum side yard setback, or further into any critical area unless authorized by the provisions of BMC 19.40.
- c. The area between the nonconforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of Burien SMP section 20.30.030.

6. **Structures Within the Aquatic Designation.** Replacement of any portion of any structure in the Aquatic shoreline designation shall comply with the SMP requirements for materials that come in contact with the water pursuant to 20.30.070 [2.b.c].

### **20.35.050 Appeals**

Any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state pursuant to BMC 19.65.060 and RCW 90.58.140 may seek review from the state shorelines hearings board by filing a petition for review within twenty-one days of the date of filing as defined in RCW 90.58.140(6).

### **20.35.055 Effective Date and Duration of Shoreline Permits**

No construction authorized by an approved shoreline permit may begin until 30 days after the final city decision on the proposal. This restriction shall be stated on the permit. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years and the construction related activity shall terminate within five years after the effective date of a shoreline permit or the final settlement date of any associated appeals or legal actions regarding the proposed action. Provided, that the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology. The City shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.



## **20.35.060 Compliance and Enforcement**

A. Choice of Action/Penalty; Conflict. The choice of enforcement action to be taken and the severity of any penalty to be imposed shall be guided by the nature of the violation, the damage or risk to the public or to public resources, and /or the existence or degree of bad faith of the person or persons subject to the enforcement action. The provisions of Section 20.35.060 shall supersede and take precedence over any other enforcement provisions of the City Code in conflict herewith.

B. Order to Cease and Desist; Notice of Correction: In the event any person is or has engaged in activity that violates any of the provisions of, BMC Chapter 20.35, RCW Chapter 90.58, or a permit issued pursuant to BMC Chapter 20.35, the City may issue and serve upon such person or persons, a cease and desist order and/or an order to take corrective action.

(1) Content of order. The order shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation and the damage or potential damage; and

(b) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time, which corrective action may include, but is not limited to, restoration and/or mitigation of the site and other property damaged.

(2) Effective date. An order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

(3) Compliance. Failure to comply with the terms of an order issued pursuant to BMC Section 20.35.060(B) shall be a violation of BMC Chapter 20.35 and can result in enforcement actions including, but not limited to, the issuance of a civil penalty.

(4) Other Action. In addition to the issuance of the cease and desist order and/or an order to take corrective action, the City may take other enforcement action available at law including, issuance of a civil notice of violation and penalties pursuant to BMC Section 20.35.060(C), seeking injunctive or declaratory relief, imposition of criminal penalties, and permit rescission as set forth in RCW 90.58.140. The City may combine an order issued pursuant to Section 20.35.060(B) with a notice of violation.

C. Civil Penalties; Procedures; Remission:

(1) Civil Violations. It shall be a civil violation of this BMC Chapter 20.35. for any person to:

(a) Use, construct or demolish any structure, or to conduct clearing, earth-moving, construction or other development not authorized under a Substantial Development Permit, Conditional Use Permit or Variance Permit, where such permit is required by BMC Chapter 20.35.

(b) Undertake or conduct any work which is not conducted in accordance with the plans, conditions, or other requirements in a permit approved pursuant to BMC Chapter 20.35, provided that the terms or conditions are stated in the permit or the approved plans;

(c) Remove or deface any sign, notice, complaint or order required by or posted in accordance with BMC Chapter 20.35;

(d) Misrepresent any material fact in any application, plans or other information submitted to obtain any shoreline use or development authorization;

(e) Fail to comply with the requirements of a substantial development permit, conditional use permit or variance issued pursuant to BMC Chapter 20.35;

(f) Undertake a development or use on shorelines of the state without first obtaining a permit required pursuant to BMC Chapter 20.35;

(g) Fail to comply with an order issued under BMC Section 20.35.060(B);

(2) Amount of penalty. The penalty for each civil violation shall not exceed one thousand dollars for each violation and shall not be less than twenty-five dollars. The amount of the penalty prescribed in the notice of violation shall be determined based upon the guidelines set forth in BMC Section 20.35.060(A).

(3) Separate Violation. Each calendar day that a civil violation occurs or continues to occur shall constitute a separate civil violation.

(4) Notice of Civil Violation. A notice of civil violation and penalty shall be imposed by issuance and service of a notice of civil violation in writing.

(5) Contents of Notice of Violation. The notice of violation shall set forth and contain:

(a) A description of the specific nature, extent, and time of violation(s) and the damage or potential damage; and

(b) A notice that the act or acts causing a violation or a potential violation shall immediately cease and desist or, in appropriate cases, the specific corrective action to be taken within a specific and reasonable time; and

(c) A notice that any order included in the notice of violation shall become effective immediately upon receipt by the person to whom the order is directed.

(6) Service of Notice of Violation. The notice of violation shall be served upon the person or persons alleged to have committed the violation either by certified mail with return receipt requested, at such person's or persons' last known address of record, or by personal service.

(7) Application for Remission or Mitigation. Any person incurring a penalty may apply in writing, within thirty days of receipt of the penalty, to the Director for remission or mitigation of such penalty. The application shall be filed with the City Clerk and shall identify the specific violation or violations for which the applicant seeks remission or mitigation, set forth the specific facts establishing the extraordinary circumstances which the applicant desires the Director to consider, include complete copies of any documents or records applicant wishes the Director to consider, include the mailing address (not a post office box) at which the applicant will receive notice of the decision, and shall be signed by the applicant. Incomplete applications and applications filed with the City after the thirty-day period specified herein shall not be considered by the Director.

Upon receipt of a complete application for remission or mitigation, the Director, or his/her designee, shall consider the application, together with any information the Director, or his/her designee, determines is relevant, and may remit or mitigate the penalty only upon a finding that that applicant has demonstrated extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. When a penalty is imposed jointly by the Department of Ecology and the City, the penalty may be remitted or mitigated only upon such terms as both the Department of Ecology and the City agree.

(8) Right of Appeal.

(a) Any person issued a notice of civil violation pursuant to BMC Section 20.35.060(C), may appeal the same to the City Council; provided that, if the penalty is imposed jointly by the City and the Department of Ecology, an appeal shall be filed with the shorelines hearings board in accordance with WAC 173-27-290.

- (b) Timing of Appeal. Except as provided below, any person appealing a notice of civil violation to the City Council shall file a written notice of appeal with the City Clerk within thirty days of service of the notice of civil violation. In the event that a timely and completed application is filed with the City Clerk for remission or mitigation, an appeal of a civil violation that is the subject of the application for remission or mitigation shall be filed within thirty days of applicant's receipt of the City's written decision regarding the remission or mitigation. The applicant shall be deemed to have received the written decision upon the earlier of the date of personal service of the written decision or three days after the written decision is deposited in the United States Mail, in a postage pre-paid, properly addressed envelope, using the applicant's address as stated in the application.
- (c) Notice of Appeal. All appeals shall be in writing and contain the following:
- i. A heading in the words: "Before the Hearing Examiner;
  - ii. A caption reading: "Appeal of \_\_\_\_\_" giving the name of all appellant(s);
  - iii. A brief statement in concise language of the violation or violations protested, together with any material facts claimed to support the contentions of the appellant, including a copy of the notice of civil violation(s) being appealed;
  - iv. A brief statement in concise language of the relief sought, and the reasons why it is claimed the protested notice of violation(s) should be reversed, modified or otherwise set aside;
  - v. The signatures of appellant and appellant's official mailing addresses;
  - vi. The verification (by declaration under penalty of perjury under the laws of the State of Washington) of the appellant as to the truth of the matters stated in the appeal.
- (d) Hearing. Within 10 days of receiving the written appeal, the city clerk shall fix a date, time and place for the hearing of the appeal. Such date shall be not less than 10 days nor more than 60 days from the date the appeal was filed; provided that, the Hearing Examiner may reset or continue a hearing upon request of the City or the party appealing, upon good cause shown, or sua sponte. Written notice of the date of the hearing shall be provided to the appellant by mailing such notice by first class mail, postage prepaid, to the appellant at the address shown on the notice of appeal. At the hearing the appellant shall be entitled to appear in person and be represented by counsel, and to offer evidence pertinent and material to those matters or issues specifically raised by the appellant in the written notice of appeal.

- (e) Evidence. Unless otherwise provided by law, evidence that is material and relevant to determination of the matter consistent with the applicable legal requirements and subject to administrative rules of proceedings before the Hearing Examiner, shall be admitted into the record whether or not such evidence was considered by the official issuing the notice of civil violation.
  - (f) Findings/Conclusions/Recommendation. The Hearing Examiner shall conduct adjudicative proceedings, receive and examine all evidence it finds relevant to the subject matter, and prepare a record thereof. When the Hearing Examiner renders a recommendation, the examiner shall make and enter written findings and conclusions which support such decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation is consistent with applicable laws, regulations and policies of the city of Burien. The Hearing Examiner may recommend that the notice of civil violation be affirmed, dismissed or modified consistent with his/her findings and conclusions. The decision or recommendation shall be rendered as soon as possible but in all events within 20 working days of the conclusion of the hearing.
  - (g) City Council. When taking final action, the City Council shall make and enter findings of fact from the record before the Hearing Examiner which support its action, may affirm, reverse, modify, or remand the decision of the hearing examiner, and may adopt all or portions of the examiner's findings and conclusions. The decision of the City Council shall be a final decision.
- (9) Penalties due.
- (a) Penalties imposed under BMC Section 20.35.060(C) shall become due and payable thirty days after receipt of notice of civil violation unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of the City's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.
  - (b) If the amount of a penalty owed the City is not paid within thirty days after it becomes due and payable, the City may take actions necessary to recover such penalty.
- (10) Aiding or abetting. Any person who, through an act of commission or omission procures, aids or abets in the civil violation shall be considered to have committed a civil violation for the purposes of the civil penalty.

D. Criminal Penalties.

In addition to incurring civil penalties under BMC Section 20.35.060(C), any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of BMC Chapter 20.35, shall be guilty of a gross misdemeanor, and shall be punished by:

- (1) A fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000);
- (2) Imprisonment in the County/City jail for not more than ninety (90) days; or
- (3) Both such fine and imprisonment; provided that, the fine for the third and all subsequent violations in any five (5) year period shall not be less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000); provided further, that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560.

E. Inspection Access.

The Director and his/her authorized representatives, may for the purpose of inspection for compliance with the provisions of a permit issued pursuant to BMC Chapter 20.35, enter all properties that are subject to such a permit. All persons applying for a permit under this BMC Chapter 20.35 shall be deemed to have given their consent to entry upon the property upon issuance of the permit. No owner or occupant of any premises shall fail to provide prompt entry to the Director or authorized representative for the purposes of inspection under this section. If such entry is refused, the City shall have recourse to every remedy provided by law to secure entry, including, issuance of a notice of a notice of correction and issuance of a notice of civil violation.

Whenever entry is required for purposes of inspection pursuant to this section, if the premises are occupied, the persons conducting the inspection shall present proper credentials and request entry, and if the premises are unoccupied, reasonable effort shall first be made to locate the owner of the premises and request entry.

F. Other Remedies.

- (1) In addition to the civil and criminal penalties provided for herein, the City may, pursuant to RCW Chapter 90.58, bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within the City of Burien in conflict with the provisions of, RCW Chapter 90.58, BMC Chapter 20.35, a permit issued pursuant to BMC Chapter 20.35, or other regulations adopted pursuant state law or city code, and to otherwise enforce the provisions of the City's Shoreline Master Program.

(2) Any person subject to the regulatory provisions of this Program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The City Attorney may bring suit for damages under this section on behalf of the City and on the behalf of all persons similarly situated pursuant to RCW Chapter 90.58.

G. Abatement.

Structures or development on shorelines considered by the Director to present a hazard or other public nuisance to persons, properties or natural features may be abated by the City using all lawful means available.

**20.35.065 Revisions to Shoreline Permits** (See also WAC 173-27-100)

1. **Revision required.** A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the shoreline permit. Changes are considered substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the Burien Shoreline Master Program and/or the policies and provisions of RCW Chapter 90.58. Changes which are not substantive in effect do not require approval of a revision.
2. **Required Information.** When an applicant seeks to revise a permit, the city will request from the applicant detailed plans and text describing the proposed changes. If the Shoreline Administrator determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the Burien Shoreline Master Program and the Shoreline Management Act, the city may approve a revision.

"Within the scope and intent of the original permit" means all of the following:

- a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
- b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;
- c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;
- d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable county master program;
- e) The use authorized pursuant to the original permit is not changed; and

- f) No adverse environmental impact will be caused by the project revision.
3. **New Permits Required.** If the revision, or the sum of the revision and any previously approved revisions will violate the criteria specified in (a)-(f) of the preceding section, the City shall require that the applicant apply for a new shoreline permit. Revisions to permits may be authorized after original permit authorization has expired under WAC 173-27-080(2). The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of RCW Chapter 90.58, the Burien Shoreline Master Program and this section. If the proposed change constitutes substantial development, then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the Washington State Department of Ecology. In addition, the city shall notify parties of record of the action.
  4. **Revisions to Conditional Use or Variance Permits.** If the revision to the original permit involves a conditional use or variance, the city shall submit the revision to the Department of Ecology for the required state's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. The Department of Ecology shall render and transmit to the City and the applicant its final decision within fifteen days of the date of their receipt of the submittal from the City. The City of Burien shall notify parties of record of the Department of Ecology's final decision.
  5. **Effective Date.** The revised permit is effective immediately upon final decision by the City or, when appropriate, upon final action by the Department of Ecology.
  6. **Appeals.** Appeals shall be to the state shorelines hearings board in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the City's action by the Department of Ecology or the date the Department of Ecology's final decision is transmitted to the City and the applicant.
  7. **Construction Authorization.** Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.



### **20.35.070 Rescission of Shoreline Permits** (See also RCW 90.58.140(8))

Whenever any development or use is in violation of a permit or shoreline exemption issued pursuant to this chapter, the City may, concurrent with or as an alternative to any other remedy provided by this title or other law or ordinance, initiate permit rescission proceedings by scheduling a public hearing before the hearing examiner and serving the applicant with written notice thereof. Notice shall be provided in accordance with BMC 19.65.045 and contain a general description of the alleged noncompliance and date, time, and place of public hearing. It shall be served by registered mail at least 15 calendar days prior to such hearing. The permit rescission request shall be processed as a Type 2 decision in accordance with the procedures established in BMC Chapter 19.65.